United Nations S/2018/893

Security Council

Distr.: General
[illegible]2018
Original: English

Credentials of the deputy representative of the United States of America on the Security Council

Report of the Secretary-General

Pursuant to rule 15 of the provisional rules of procedure of the Security Council, the Secretary-General wishes to report that he has received a letter dated 8 June 2018 from the Permanent Representative of the United States of America to the United Nations stating that Mr. Jonathan R. Cohen has been appointed deputy representative of the United States on the Security Council.

In the opinion of the Secretary-General, that letter constitutes adequate provisional credentials.

18-16629 (E) 081018

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United Nations S/2018/894

Security Council

Distr.: General
8 October 2018
English
Original: Russian

Letter dated 5 October 2018 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith information bulletins from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas in the Syrian Arab Republic for 4 and 5 October 2018 (see annex).

I should be grateful if you would have these bulletins circulated as a document of the Security Council.

(*Signed*) V. **Nebenzia**

18-16726 (E) 101018 101018

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Annex to the letter dated 5 October 2018 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

Information bulletin from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas (4 October 2018)

Observance of the ceasefire regime

Monitoring groups have continued to monitor observance of the ceasefire regime as part of implementing the memorandum on the creation of de-escalation areas in the Syrian Arab Republic, signed by the Russian Federation, the Republic of Turkey and the Islamic Republic of Iran on 4 May 2017.

The number of violations by illegal armed groups active in the Idlib de-escalation area has not decreased.

The Russian representative office of the Russian and Turkish Joint Commission reviewing issues related to violations of the ceasefire regime has reported 11 incidents of gunfire in the following Governorates: 7 in Ladhiqiyah, 2 in Aleppo and 2 in Hama.

Provision of humanitarian aid to the population of the Syrian Arab Republic

Over the past 24 hours, the Centre for Reconciliation of Opposing Sides has carried out two humanitarian operations.

In total, 1,952 humanitarian operations have been carried out. The total weight of humanitarian cargo delivered is 3,050.96 tons.

Reconciliation of opposing sides

No ceasefire agreements have been signed over the past 24 hours.

The number of populated areas that have joined the reconciliation process is 2,518.

The number of armed groups that have announced their commitment to accepting and fulfilling the terms of the ceasefire is unchanged — it is still 234.

Information bulletin from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas (5 October 2018)

Observance of the ceasefire regime

Monitoring groups have continued to monitor observance of the ceasefire regime as part of implementing the memorandum on the creation of de-escalation areas in the Syrian Arab Republic, signed by the Russian Federation, the Republic of Turkey and the Islamic Republic of Iran on 4 May 2017.

The number of violations by illegal armed groups active in the Idlib de-escalation area has not decreased.

The Russian representative office of the Russian and Turkish Joint Commission reviewing issues related to violations of the ceasefire regime has reported eight incidents of gunfire in Ladhiqiyah Governorate.

The Turkish representative office has reported one incident of gunfire in Hama Governorate.

Provision of humanitarian aid to the population of the Syrian Arab Republic

Over the past 24 hours, the Centre for Reconciliation of Opposing Sides has carried out one humanitarian operation: in Salim, Suwayda' Governorate, 300 food parcels with a total weight of 1.29 tons were distributed.

In total, 1,953 humanitarian operations have been carried out. The total weight of humanitarian cargo delivered is 3,052.25 tons.

Reconciliation of opposing sides

No ceasefire agreements have been signed over the past 24 hours.

The number of populated areas that have joined the reconciliation process is 2,518.

The number of armed groups that have announced their commitment to accepting and fulfilling the terms of the ceasefire is unchanged — it is still 234.

United Nations S/2018/895

Security Council

Distr.: General
8 October 2018

Original: English

Identical letters dated 7 October 2018 from the Permanent Representative of Israel to the United Nations addressed to the Secretary-General and the President of the Security Council

This morning, the people of Israel were reminded yet again of the recent rise of Palestinian terrorism that has resulted undeniably from the Palestinian Authority's policy of incitement.

A terrorist filled with hatred who had a submachine gun shot Kim Levengrond Yehezkel and Ziv Hajbi. Both were young parents who worked in the Barkan industrial zone, an area that symbolizes coexistence between Israelis and Palestinians. After first binding Kim and Ziv, the terrorist shot them, then continued his vicious attack, wounding another Israeli civilian before escaping with his weapons from the area. As of the drafting of the present letter, the terrorist is still at large.

This terrorist attack marks the latest of dozens of recent terrorist attacks emanating from the West Bank. There is a direct link between these attacks and the terrorists' exposure to the Palestinian Authority's messages of violence and hate against Israelis.

The Palestinian Authority, led by Mahmoud Abbas, must cease and prevent, with all of its might, the continuation of this extreme incitement that occurs regularly within areas under its control. Instead of dictating to Israel and ignoring proposals to bring calm to the region, Abbas must take a clear and firm stance against terrorism and incitement, including the payment of terrorists and their families for killing innocent Israelis. This financial incentive only fuels further violence, just like what we saw this morning at the Barkan plant. Only stopping the system of incitement and rewards can put an end to terror.

I urge you to condemn this terrorist attack unequivocally. This is the Security Council's responsibility and duty to the Middle East and to the world, including, most important, the children who lost a parent this morning.

I should be grateful if you would have the present letter distributed as a document of the Security Council.

(*Signed*) Danny **Danon**
Ambassador
Permanent Representative

18-16682 (E) 091018

Please recycle

United Nations S/2018/896

Security Council

Distr.: General
8 October 2018

Original: English

Letter dated 8 October 2018 from the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea addressed to the President of the Security Council

On behalf of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, I have the honour to transmit herewith the report of the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator pursuant to paragraph 34 of Security Council resolution 2385 (2017) on the delivery of humanitarian assistance in Somalia and any impediments to the delivery of humanitarian assistance in Somalia.

I would appreciate it if the present letter and the report were brought to the attention of the members of the Security Council and issued as a document of the Council.

(*Signed*) Kairat **Umarov**
Chair
Security Council Committee pursuant to resolutions 751 (1992)
and 1907 (2009) concerning Somalia and Eritrea

18-15759 (E) 081018

Please recycle

Letter dated 18 September 2018 from the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator addressed to the Chair of the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea

In accordance with paragraph 34 of Security Council resolution 2385 (2017), I have the honour to transmit the requested report on the implementation of paragraphs 33 and 34 and on any impediments to the delivery of humanitarian assistance in Somalia.

The humanitarian community working in Somalia wishes to advise that, as with the previous 12 reports, it maintains the definition of "implementing partner" pursuant to paragraph 5 of Security Council resolution 1916 (2010), which is as follows:

"Implementing partner" — a non-governmental organization (NGO) or community-based organization that has undergone due diligence to establish its bona fides by a United Nations agency or another NGO and that reports when requested to the Resident and Humanitarian Coordinator for Somalia on mitigation measures. Implementing partners have the following characteristics:

(a) The organization is part of the humanitarian response plan for Somalia (or the Somalia Humanitarian Fund) process; and/or

(b) The organization is represented in a cluster's 3W matrix (*Who* does *What* and *Where*).

I remain available should you have any questions about the content of the report or need further clarification on the humanitarian situation in Somalia.

(*Signed*) Mark **Lowcock**
Under-Secretary-General for Humanitarian Affairs
and Emergency Relief Coordinator

Report of the Under-Secretary-General for Humanitarian Affairs and Emergency Relief Coordinator

Introduction

1. The present report is submitted pursuant to Security Council resolution 2385 (2017), the resolution succeeding resolutions 1916 (2010), 1972 (2011), 2060 (2012), 2111 (2013), 2182 (2014) and 2244 (2015) and 2317 (2016), in which the Council established the reporting requirement. It is the thirteenth submission pursuant to the above-mentioned resolutions. The Council, in paragraph 34 of its resolution 2385 (2017), requested the Emergency Relief Coordinator to report to the Council by 15 October 2018 on the delivery of humanitarian assistance in Somalia and on any impediments thereto.

2. The present report covers the period from September 2017 to September 2018. It focuses primarily on the delivery of humanitarian assistance to affected people in areas under the control or influence of Al-Shabaab, which was included on the sanctions list pursuant to paragraph 8 of Security Council resolution 1844 (2008), by the Security Council Committee pursuant to resolutions 751 (1992) and 1907 (2009) concerning Somalia and Eritrea, on 12 April 2010. As in the previous 12 reports (S/2010/372, S/2010/580, S/2011/125, S/2011/694, S/2012/546, S/2012/856, S/2013/415, S/2014/177, S/2014/655, S/2015/731, S/2016/827 and S/2017/860), the present report outlines constraints to humanitarian access and operational implications. In addition, it summarizes mitigation measures established to address the risks of politicization, misuse and misappropriation of humanitarian assistance. The report is based on information synthesized in consultation with relevant humanitarian organizations active in Somalia and information from the Risk Management Unit in the Office of the United Nations Resident Coordinator for Somalia.

Humanitarian situation

3. The food security situation has continued to improve, however, needs remain critical, with internally displaced persons among the most vulnerable people in need in Somalia. An estimated 4.6 million people are in need, down from the 5.4 million people who required assistance between February and August 2018. The improvement in food security is attributable to the sustained humanitarian response and the above-average rainfall during the *gu* rains from April to June. Somalia has consequently had the wettest season in recent years, boosting the harvest of cereals to the highest levels since 2010. The projection of above-average rainfall for the coming *deyr* season is likely to result in further food security improvements.

4. However, despite the recent improvements to the food security outlook, such gains remain fragile and humanitarian needs in Somalia are still substantially high. The number of people in need still exceeds the levels prior to the onset of the drought crisis in 2016. Vulnerable communities have not recovered from the significant losses, in particular those sustained by agriculturalists and pastoralists, as a result of the drought crisis. Consequently, emergency and crisis levels of food insecurity persist in Somalia. Humanitarian needs in Somalia are driven by the increase in internal displacement that occurred during the drought, as people in inaccessible, rural areas sought assistance in populated areas that humanitarians could reach more easily. New displacements due to conflict and other factors, including lack of food, reunification with family, health care, education opportunities, insecurity and the search for better living conditions, have continued in 2018. The total number of internally displaced Somalis is estimated to be 2.6 million people, who are currently living in dire conditions in urban and peri-urban areas and require continuous assistance with basic

services. Internally displaced persons constitute some 58 per cent of the 1.5 million people in urgent need of assistance, the majority of whom are children.

5. Notwithstanding the improvements in the food security situation, high malnutrition rates prevail across the country, especially among the highly vulnerable internally displaced population. The nutritional status of children aged under 5 years remains largely unchanged owing to prolonged conflict, overstretched services and the lasting impact of the drought crisis in 2016. An estimated 954,000 children are expected to be acutely malnourished over the year, including 173,500 who are in need of urgent life-saving treatment. The situation is predicted to worsen between August and October, especially in the north-eastern parts of the country, as well as in areas that are hosting large internally displaced populations. The risk of evictions continues to rise for internally displaced persons, who are often the most vulnerable and, so far this year, more than 204,000 people have been evicted, equal to the total number of people evicted in 2017.

Humanitarian response

6. Humanitarian partners have continued to provide life-saving assistance alongside livelihood support. Each month, nearly 2 million people are receiving food assistance and over 755,000 are being assisted with temporary access to safe water. Between January and August, health services were provided to more than 2 million people, most of whom were in flood-affected areas. Over the same period, the nutrition cluster treated 154,544 children for severe acute malnutrition. While cases of acute watery diarrhoea, cholera and measles continue to be reported, their frequency is significantly lower than in 2017, owing mainly to immunization campaigns that were conducted in 2017 and 2018, in which more than 4.4 million children were vaccinated against measles. Routine vaccinations for tuberculosis, tetanus and measles are also under way.

7. Humanitarian operations in Somalia remain critically underfunded, and the international community needs to sustain assistance and financial support to enable Somalia to respond to the current and future crises. In 2018 to date, donors have generously contributed $577 million towards the humanitarian response plan, in addition to $179 million in funding received outside the appeal. However, the total humanitarian funding received is considerably lower than the funding received during the same period in 2017. While last year, generous and early assistance enabled humanitarian partners to save lives, sustain the humanitarian response and avert famine, this year's funding shortfall may hamper the effective delivery of vital services. Funding shortfalls present a particular risk of service disruptions for displaced communities, including with regard to the restoration of education, health, nutrition, water, sanitation and hygiene facilities. Sustained funding is critical to enable aid agencies to boost the provision of life-saving assistance and, ultimately, to put the affected communities on the path to recovery.

Humanitarian access constraints and operational implications

8. The humanitarian operational environment in Somalia remains very challenging. The safety of humanitarian operations remains a key concern owing to the volatile and unpredictable security situation. During the first eight months of 2018, over 85 violent incidents affected humanitarian organizations, resulting in the death of 7 humanitarian workers, the injury of 12, the abduction of 18 and the arrest and temporary detention of 12. Over 80 per cent of the incidents took place in southern and central Somalia, with more than half of the deaths and injuries occurring in Mogadishu. Incidents vary in nature and include directly targeted attacks, as well as incidental violence. Security incidents further range in severity, from the most severe including assassinations, kidnappings for ransom, abduction, expulsion, looting and

deliberate destruction of assets or facilities, arrest and detentions, to the least severe, such as verbal and written threats. As in previous years, the collateral impact of attacks in populated places in Mogadishu continues to account for the majority of humanitarian personnel casualties. The number of assassinations in Mogadishu is also continuing to rise. Although the targets of most of the assassinations are government officials and security personnel, there have been instances in which humanitarian workers have also been targeted, both in Mogadishu and in other regional states. For example, in March, Al-Shabaab claimed responsibility for an attack on a humanitarian worker, who was killed after an improvised explosive device that had been attached to his vehicle was detonated.

9. Although the number of humanitarian workers abducted by Al-Shabaab for ransom decreased, from the 25 recorded during first eight months of 2017 to five during the same period in 2018, the overall number of abductions of humanitarian workers remains high. While ransom was demanded for 25 of the 31 humanitarian workers that were abducted in 2017, in 2018, Al-Shabaab has demanded ransom for only 5 of the 18 humanitarian workers abducted to date. After successful community-led negotiations, 17 of the 18 aid workers have been released. One international female humanitarian staff member, who was abducted on 2 May 2018, continues to be held by her captors. The impact of the abductions is felt not only by the organizations directly concerned. Abductions also affect the people in need of assistance and protection, who are often left without assistance when the affected organizations decide to scale down or suspend operations. For example, in early August 2018, following the prolonged detention of one staff member, the International Committee of the Red Cross reduced its activities in Somalia, affecting access to assistance and protection for people who depend on its programmes. In another incident, in August, five staff members of a humanitarian organization were forced to abandon a beneficiary registration exercise in Gedo region, Jubbaland State, after the community members urged them to immediately leave the village as Al-Shabaab militants closed in on them, forcing the organization to consider another location for the project.

10. Al-Shabaab continues to implement hostile policies against most humanitarian organizations, for example, by directly targeting their personnel or assets. It also continues to direct local populations not to accept assistance packages from some humanitarian organizations and to punish communities that do accept such packages. For example, on 26 May, Al-Shabaab militants abducted three beneficiaries of a cash-for-work water catchment project in Bay region, South-West State, for failing to abide by its directive banning local communities from working for the project. In January 2018, in Shabelle Hoose, South-West State, Al-Shabaab destroyed the construction site of a humanitarian agency building water, sanitation and hygiene facilities using an improvised explosive device attack, and in March, it also destroyed a water source built by a humanitarian organization in K50 in Shabelle Hoose, South-West State. The later incident left about 5,000 people and an unspecified number of livestock without access to water.

11. The number of violent incidents associated with disorder and the looting of relief supplies increased during the second quarter, following the scaling-up of humanitarian interventions to respond to the effects of the floods in April to June 2018. The same trend in the frequency of incidents was also recorded in 2017 when humanitarian organizations scaled up drought response interventions. Violence associated with aid distribution accounted for the majority of the 26 violent incidents that affected humanitarians during the *gu* rainy season. As a result, in order to address interference with aid delivery, humanitarian organizations have been urged to improve planning for distribution activities, including by ensuring community

participation, as appropriate, and transparently addressing any grievances that communities may have with regard to beneficiary selection.

12. A steady increase has been observed in the number of incidents in which armed actors attempt to use force to coerce humanitarians to include them or their relatives as beneficiaries of aid. During the first eight months of 2018, more than 20 such incidents were recorded. In addition to the use of violence to threaten humanitarian workers, in some instances, armed actors have looted relief supplies and/or confiscated assets. For example, in May in Hobyo, Galmudug State, a gunman shot at a humanitarian vehicle, injuring one aid worker, after the gunman had been rejected as a beneficiary for a humanitarian project for which he was not eligible. In June, armed clan militia disrupted a relief distribution exercise and looted relief supplies in Laascaanood, in Sool region in northern Somalia. One of the armed men shot and wounded two female internally displaced beneficiaries, while one of the humanitarian organization's staff sustained stab wounds. In a related incident that involved state security forces in Galmudug in August, an assortment of relief supplies were robbed at gunpoint. In cases where government-affiliated actors are involved, the Office for the Coordination of Humanitarian Affairs immediately follows up with the authorities concerned at both the federal and regional state levels, often receiving commitments from the authorities to work alongside humanitarian organizations to have such concerns addressed. The Office continues to make efforts to improve the timeliness of the reporting of such incidents, as well as gathering the evidence required to inform follow-up efforts with the authorities. In addition, some local community leaders have continued to address such violations, especially when clan militias are involved.

13. Despite some milestone commitments made by the Federal Government of Somalia and some regional states, including Galmudug, HirShabelle, Puntland and South-West State, humanitarian organizations and the general civilian population are continuing to experience severe challenges related to the roads in 42 districts in southern and central Somalia and in Bari, Puntland. Extortion and other violations are common occurrences at the numerous illegal checkpoints controlled by both State and non-State affiliated armed actors. Similar violations continue to be reported at the authorized checkpoints along all major access roads in southern and central Somalia, with the following access roads most affected: Mogadishu-Afgooye-Baidoa, Mogadishu-Balcad-Jawhar and Cadaado-Gaalkacyo. While several operations were conducted to remove the unauthorized checkpoints along some access roads, including Mogadishu-Afgooye-Wanlaweyn, Mogadishu-Balcad-Jawhar, Gaalkacyo-Cadaado-Dhuusamarreeb and Garoowe-Boosaaso, the armed actors have adjusted by creating non-static checkpoints. Aid organizations continue to urge the authorities to build on the milestone commitments and efforts initiated in 2017 and to prioritize the securing of the major supply routes.

14. Furthermore, the siege by Al-Shabaab of some government-held towns in HirShabelle, South-West State and Jubbaland State has continued to hinder the transport of humanitarian and commercial supplies. The siege has continued to be strictly enforced in Xuddur and Waajid in Bakool, Diinsoor in Bay, Buulobarde in Hiraan, and Marka in Shabelle Hoose. In Buulobarde, Xuddur and Waajid, Al-Shabaab militants continue to target donkey cart drivers who are driving off-road in an attempt to sneak essential supplies into towns. Al-Shabaab often confiscates or destroys the supplies, in addition to committing other violations, including killing the transporters, subjecting them to physical assault and levying fines. For example, in June, Al-Shabaab attacked 13 trucks that were returning from carrying supplies from Beledweyne to the besieged town of Xuddur, resulting in the burning of 11 trucks and at least seven deaths; and in March, Al-Shabaab burned nine donkey carts that were transporting food commodities in Gedo, Jubbaland State, but the seven men who were driving the

carts managed to escape. Such incidents are common occurrences in the affected regions.

15. Humanitarian organizations continue to access the besieged towns by air. These include areas such as Buulobarde in Hiraan, HirShabelle State, Diinsoor in Bay and Waajid and Xuddur in Bakool, South-West State, and Garbahaarey in Gedo, Jubbaland State. Humanitarian organizations have been able to access Buulobarde by air only since 2014, owing to Al-Shabaab's aggressive implementation of a blockade on the town. Al-Shabaab continues to frequently plant improvised explosive devices at the airstrip, which is not protected around the clock. Security forces conduct a security sweep only when flights are expected, and pe.manent security arrangements for the airport are required. In the third incident of i.s type over a brief period, on 15 January, an improvised explosive device exploded at the airfield, posing a real threat to travellers. Discoveries of improvised explosive devices at the airstrip continue to be frequently reported, raising safety concerns for travelle. including humanitarian personnel and civilians.

16. Al-Shabaab also continues to sustain pressure on the Jawhar-Mogadishu and Mogadishu-Afgooye-Marka access roads by staging improvised explosive device attacks and coercing vehicles using such routes to pay "taxes". Trucks using the main supply routes in Hiraan continue to be subjected to Al-Shabaab attacks, a situation that has been long-standing because of the group's enforcement of its economic blockade on government-controlled towns. Road access along the Mogadishu-Afgooye-Baidoa route continues to be severely constrained owing to the mounting demands of and extortion by "State-affiliated armed groups" (that is, groups affiliated with the national Government), clan militia, criminal groups and Al-Shabaab. According to local communities, Al-Shabaab has, in particular, continued to increase its fees along some stretches of the Mogadishu-Baidoa and Mogadishu-Jawhar routes. For example, Al-Shabaab issued an instruction that, from mid-June 2018, all Toyota Noah drivers utilizing the Balcad-Afgooye road must pay a registration fee of a $100 per vehicle and a daily road toll of $3. The vehicles are popular because of their fast shuttle services between towns and villages. To ensure compliance, Al-Shabaab set up a checkpoint in the Dar es Salaam area near Ratiweyne village in Dayniile district. In addition, illegal checkpoints continue to be established intermittently along access roads in Galmudug by State-affiliated armed groups, as well as clan militias and criminals.

17. Furthermore, throughout southern and central Somalia, civilians continue to face more rigorous taxation by Al-Shabaab, forcing many into displacement and causing the loss of productive assets, thus rendering those civilians more vulnerable to food insecurity. In Marka town in Shabelle Hoose, taxation has been imposed on donkey carts that are supplying or collecting commodities. In many areas, traders are now subject to double taxation, paying both to Al-Shabaab and to the Government, which has made small businesses non-lucrative and has led to price hikes for consumers. During the 2018 *gu* rains, regions with farming communities were reportedly forced by Al-Shabaab to pay "taxes" to tend to their fields after good rains, while in parts of Galmudug, including in Ceel Buur, Ceel Dheere and Xarardheere districts, Al-Shabaab also increased taxation, requiring money and livestock to be provided as zakat or a "voluntary jihad" contribution. For example, farmers in Booshol village in Diinsoor, Bay region in South-West State, were directed to pay $30 to tend to their farms and, consequently, several families were forced to vacate their farms and move to settlements for internally displaced persons in Baidoa because they could not afford to pay. In Waajid in Bakool, also in South-West State, internally displaced persons continue to express concern over Al-Shabaab's excessive taxation and harassment whenever they attempt to tend to their farms outside town. It should be noted that some internally displaced persons were forced to abandon

farming activities because of the taxation imposed by Al-Shabaab, and those who cannot afford to pay are being coerced into surrendering their children for recruitment.

18. Aggressive forced child recruitment campaigns in areas in southern and central Somalia, and in parts of Bari region in Puntland have continued to drive civilians into displacement, increasing the humanitarian caseload. The country taskforce monitoring and reporting mechanism reported that, from January to July 2018, a total of 1,568 children (including 43 girls) were recruited and used by armed forces and groups in Somalia. Al-Shabaab accounts for at least 80 per cent of the children recruited in Somalia. During the same period, the United Nations Children's Fund (UNICEF) and its partners provided protection services to 817 children (including 96 girls) who had escaped from Al-Shabaab or had been released by armed forces in various areas of Somalia.

19. Al-Shabaab continues to take control of towns after the withdrawal of the Somali national armed forces and other government-affiliated forces, resulting in the disruption of humanitarian operations and, in some cases, the complete suspension of programmes. In 2018, the seizure of control of towns and villages, at times temporarily, by Al-Shabaab was reported in areas in HirShabelle, South-West State, Jubbaland and Puntland. The reactions of the population upon the taking of the towns are often mixed. In some areas, Al-Shabaab carries out retaliatory attacks on civilians that they deem to be government supporters or collaborators; and in other towns it only talks or preaches to local populations, without harming anyone. For example, in June, in Baxdo in Galmudug, Al-Shabaab militants took control for several hours, preaching to the population, without causing harm, and subsequently in July, it temporarily took over Caad village and the surrounding areas, burning houses, destroying several shallow wells and confiscating livestock from pastoralists who were accused of retaliating. Al-Shabaab also besieged the village and continued to block the delivery of medical and commercial supplies, including food and fuel. In July, it carried out revenge attacks on Hawadle clan civilians in parts of Hiraan and Shabelle Hoose by looting all their livestock, and Al-Shabaab destroyed the main bridge in Qoryooley in Marka district, Shabelle Hoose, through an improvised explosive device attack.

20. Conflict between Somaliland and Puntland over control of parts of Sool and Sanaag regions escalated again during the first quarter of 2018, with hostilities around Tukaraq in Sool region. Tensions remain high, while efforts to resolve the stand-off are under way. To date, all mediation efforts by external actors, including the United Nations, have failed and both parties have remained firm on their positions, setting prerequisite conditions on entering into negotiations that are unacceptable to the opposing side. Politicians on both sides have been fuelling the conflict with inflammatory statements, and both Puntland and Somaliland continue to mobilize and amass troops along the frontline. The heightened tensions and the level of preparedness demonstrated by both parties has elevated the risk of a full-fledged escalation of armed hostilities.

21. Clan conflicts remain a major concern, particularly in Hiraan, Galmudug, Shabelle Hoose, Shabelle Dhexe and Sool regions, where clan violence costs lives and livelihoods and displaces families. Humanitarian programmes in the affected locations are often suspended until the conflict is resolved. Occasionally, local humanitarian staff belonging to warring clans have been victimized or caught up in the conflict. Clan-related conflicts are mainly recorded in areas where pastoralist communities reside, owing to competition for scarce resources such as water and pasture, or in areas where farmers clash with nomads or over farmland. Galguduud and Hiraan remain the most affected areas with prolonged clan conflicts, and Galguduud region is particularly notable for clan skirmishes owing to the harsh environment and competition for resources. During the second quarter of 2018,

Sanaag region saw a sharp increase in incidents of clan-related violence owing to renewed fighting in Ceel Afweyn district. Hiraan region, particularly Beledweyne district, also continues to be affected by several clan conflicts. While clan elders and the authorities continue to prioritize negotiations to address ongoing clan conflicts, the payment of blood compensation remains the key determinant to conflict resolution. Even after reconciliation efforts have been successful, conflicts have the potential to reignite quickly over small or perceived provocations. For that reason, humanitarian organizations operating in the areas must be kept abreast of all incidents that can lead to clan conflicts, including those that may have occurred months or years in the past, to avoid falling prey to the revenge cycle.

22. Parties to the conflict have had an impact on telecommunication services, by ordering service providers to terminate services or attacking, destroying and damaging telecommunication installations. Disruptions to telecommunication services have affected some humanitarian programmes, including the provision of cash assistance and remote monitoring through call centres. In July, the killing of two Hormuud Telecom staff and the destruction of the company's building and antenna in Ceel Waaq, Gedo region, cut off all telecommunication services, including Internet and telephone services, interrupting aid programmes. The incident was the third time a Hormuud Telecom branch was reportedly destroyed by the Kenyan security forces that are not part of the African Union Mission in Somalia since the beginning of the year. Previously, those forces were accused of destroying the Hormuud Telecom installations in Dhamas and Ceel Banade in Jubbaland State. Humanitarian organizations continue to urge all parties to the conflict to respect civilian installations.

23. The forced evictions of internally displaced persons from established settlements continue to rise, leading to the loss of the significant investments made by humanitarian partners to facilitate access to basic services, including the establishment of water points and other water, sanitation and hygiene facilities, maternal and children's health centres and education facilities. During the eviction in Mogadishu in December 2017, approximately 4,220 households in 25 out of 38 settlements were destroyed, along with infrastructure such as schools, water, sanitation and hygiene facilities and other community facilities. To date in 2018, over 204,000 people have been evicted, which is equal to the number of people evicted in 2017 as a whole. Evictions are often carried out with little or no notice, and at times with the complicity of uniformed armed security personnel enlisted by land owners. On average, more than 155,000 people have been evicted across Somalia every year since 2015, and over 11,000 internally displaced persons are, on average, evicted every month. Many have been subject to multiple evictions. Up to 2015, large-scale evictions mostly affected internally displaced persons inhabiting public land and buildings, but over the past three years, forced evictions have increasingly targeted internally displaced persons hosted on private land.

24. Parties to the conflict have also continued to carry out airstrikes in some areas in Jubbaland State, South-West State and Puntland. The targets of the airstrikes have mainly been the assets and personnel of Al-Shabaab and Islamic State in Iraq and the Levant (ISIL) located outside residential areas or within isolated areas under their control. Although, to date, the airstrikes have had no direct impact on humanitarian operations, the risk to operations located in the affected regions remains, in particular for vehicles moving supplies and personnel, which might be targeted in error. The renewed call during the first and second quarters of 2018 by the Office for Foreign Disaster Assistance of the United States Agency for International Development for humanitarian organizations to submit deconfliction data may portend future possible increases in airstrikes. As a secondary impact, aerial attacks have reportedly made Al-Shabaab more suspicious of humanitarian organizations, on the basis that they could be collecting information to be used for airstrikes.

25. On 2 September 2018, the Federal Government of Somalia formalized its directive to international NGOs to relocate their leadership to Somalia by the end of 2018 through an official letter, advising that failure to comply by January 2019 will result in deregistration. International NGOs have responded positively to the directive and have already moved ahead, creating a committee to facilitate the process and to address the implications of the directive. International NGOs have also reiterated their request to the Federal Government of Somalia and regional states to expedite the establishment of a centralized and enabling framework, an initiative that has been under way for the past three years. In the absence of a centralized regulatory framework, aid organizations have continued to face demands such as arbitrary taxation, the involvement of authorities in contracting suppliers and service providers, and interference in staff recruitment, including screening, interviewing, selection and vetting. These have continued to lead to disruptions, delays, intrusions on humanitarian facilities, arrests, the detention and expulsion of humanitarian workers and occasional temporary suspensions of humanitarian programmes. During the first eight months of 2018, nearly 100 such incidents were recorded, accounting for the arrest and temporary detention of 12 humanitarian workers and the expulsion of 2 for alleged infractions. In comparison, in 2017, 22 humanitarian workers were arrested and temporarily detained, while 9 humanitarian workers, including 3 international staff and 6 Somali national staff were expelled by the authorities.

Risk mitigation measures

26. The Organization and United Nations agencies, funds and programmes have continued to put in place and implement enhanced risk management and control measures to ensure full accountability for their activities and funds channelled towards humanitarian response in the challenging operational environment in Somalia.

27. The Risk Management Unit supports the United Nations system, the Government of Somalia, at both the federal and regional state levels, and other development and humanitarian actors with the following services: facilitation of the design and promotion of the adoption of the collective risk management and due diligence standards; risk management advice; risk management training (online and classroom-based); information-sharing and information management; maintenance and enhancement of the Contractor Information Management System, the provision of support to multi-partner trust funds and the Somalia Development and Reconstruction Facility ; use of country systems and risk assessments and analysis for potential and existing partners. All the risk mitigation measures, practices, tools in place and tailored recommendations are designed to help agencies to address or mitigate a wide range of identified risks, including fiduciary, fraud, programme, integrity and reputational risks. The Risk Management Unit continues to support the Office of Internal Oversight Services and audit and investigations offices of different United Nations agencies, as required, through its monitoring team and risk analysts. The Risk Management Unit continues to establish and strengthen partnerships within the Organization and with the Government of Somalia, the NGO community, donors, law enforcement and other humanitarian and development partners.

28. As at 31 August 2018, the Contractor Information Management System database contains information contributed by the Risk Management Unit and 15 United Nations agencies on more than 4,060 contractors and suppliers to the United Nations in Somalia. The value of contracts covered therein is around $5.1 billion. Regular updates include the listing of entities subject to Security Council sanctions and periodic updates of the World Bank exclusion list and the International Criminal Police Organization (INTERPOL) list of wanted persons for Somalia. Individuals and organizations identified in the reports on Somalia by the Monitoring Group on

Somalia and Eritrea are added to the database as and when required. The Risk Management Unit also provides risk analysis and updates to the United Nations, World Bank, and African Development Bank trust funds (Somalia Development and Reconstruction Facility funds) in support of the implementation of the National Development Plan. Over the reporting period, donor funds channelled through the United Nations multi-partner trust to the national funding stream have increased from $2 million to $11 million.

Impact of paragraphs 32 and 33 of resolution 2385 (2017)

29. In paragraph 33 of resolution 2385 (2017), the Security Council decided that, until 15 November 2018, the measures imposed on Member States in paragraph 3 of resolution 1844 (2008) shall not apply to the payment of funds, other financial assets or economic resources necessary to ensure the timely delivery of urgently needed humanitarian assistance in Somalia. While organizations surveyed for the present report did not explicitly comment on the impact of paragraphs 32 and 33 of resolution 2385 (2017) on their ability to implement programmes, the non-renewal of the humanitarian exemption would result in delays in the delivery of humanitarian assistance in areas controlled by non-State armed groups, which would put affected communities at risk of loss of lives and livelihoods and of exposure to suffering.

Conclusions

30. After nearly three decades of turmoil, Somalia is currently on a positive trajectory towards peace and stability. When renewed risk of famine became apparent in early 2017, donors and operational humanitarian agencies acted promptly to scale up the humanitarian response and to save lives. The extensive mobilization reflects unprecedented and timely international solidarity, which is in line with commitments made as part of the Grand Bargain at the World Humanitarian Summit in 2016. It also reflects persistent efforts by humanitarian organizations to reach those in need, including in dangerous and insecure areas, to save lives and prevent the loss of livelihoods. Although large-scale famine has been averted to date, some communities in the hardest-to-reach areas in southern and central Somalia remain at risk of famine, and further efforts are required to ensure that the most vulnerable areas do not slip into famine in the coming months.

31. Humanitarian organizations active in Somalia continue to strike a balance between security concerns and ensuring effective service delivery under the principle of staying, protecting and delivering. Humanitarian partners also continue to seek to expand access where the needs are greatest, despite significant security challenges. The aforementioned efforts require flexible and timely funding to effectively provide assistance to millions of Somalis.

32. In the light of the foregoing, the Under-Secretary-General and Emergency Relief Coordinator invites the Security Council to renew the humanitarian exemption provided for in paragraph 33 of its resolution 2385 (2017).

United Nations S/2018/897

Security Council

Distr.: General
10 October 2018
English
Original: Russian

Letter dated 8 October 2018 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith information bulletins from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas in the Syrian Arab Republic for the period 6–8 October 2018 (see annex).

I should be grateful if you would have this letter and its annex circulated as a document of the Security Council.

(*Signed*) V. Nebenzia

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Annex to the letter dated 8 October 2018 from the Permanent Representative of the Russian Federation to the United Nations addressed to the Secretary-General

Information bulletin from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas (6 October 2018)

Observance of the ceasefire regime

Monitoring groups have continued to monitor observance of the ceasefire regime as part of implementing the memorandum on the creation of de-escalation areas in the Syrian Arab Republic, signed by the Russian Federation, the Republic of Turkey and the Islamic Republic of Iran on 4 May 2017.

The number of violations by illegal armed groups active in the Idlib de-escalation area has not decreased.

The Russian representative office of the Russian and Turkish Joint Commission reviewing issues related to violations of the ceasefire regime has reported five incidents of gunfire: three in Ladhiqiyah Governorate and two in Aleppo Governorate.

The Turkish representative office has reported three incidents of gunfire in Hama Governorate.

Provision of humanitarian aid to the population of the Syrian Arab Republic

No humanitarian operations have been carried out by the Centre for Reconciliation of Opposing Sides in the Syrian Arab Republic over the past 24 hours.

In total, 1,953 humanitarian operations have been carried out. The total weight of humanitarian cargo delivered is 3,052.25 tons.

Reconciliation of opposing sides

No ceasefire agreements have been signed over the past 24 hours.

The number of populated areas that have joined the reconciliation process is 2,518.

The number of armed groups that have announced their commitment to accepting and fulfilling the terms of the ceasefire is unchanged — it is still 234.

Information bulletin from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas (7 October 2018)

Observance of the ceasefire regime

Monitoring groups have continued to monitor observance of the ceasefire regime as part of implementing the memorandum on the creation of de-escalation areas in the Syrian Arab Republic, signed by the Russian Federation, the Republic of Turkey and the Islamic Republic of Iran on 4 May 2017.

The number of violations by illegal armed groups active in the Idlib de-escalation area has not decreased.

The Russian representative office of the Russian and Turkish Joint Commission reviewing issues related to violations of the ceasefire regime has reported nine incidents of gunfire in the following Governorates: six in Ladhiqiyah, two in Aleppo and one in Hama.

No incidents of gunfire have been reported by the Turkish representative office.

Provision of humanitarian aid to the population of the Syrian Arab Republic

The Centre for Reconciliation of Opposing Sides in the Syrian Arab Republic has carried out three humanitarian operations over the past 24 hours:

- in Turkan, Aleppo Governorate, 450 food parcels with a total weight of 1.95 tons were delivered;
- in Tabiyah, Dayr al-Zawr Governorate, 450 food parcels with a total weight of 1.95 tons were delivered;
- in Shamiyah, Ladhiqiyah Governorate, 450 food parcels with a total weight of 1.95 tons were delivered.

In total, 1,956 humanitarian operations have been carried out. The total weight of humanitarian cargo delivered is 3,058 tons.

Reconciliation of opposing sides

No ceasefire agreements have been signed over the past 24 hours.

The number of populated areas that have joined the reconciliation process remains unchanged at 2,518.

The number of armed groups that have announced their commitment to accepting and fulfilling the terms of the ceasefire is unchanged — it is still 234.

Information bulletin from the Russian Federation Ministry of Defence regarding the status of implementation of the memorandum on the creation of de-escalation areas (8 October 2018)

Observance of the ceasefire regime

Monitoring groups have continued to monitor observance of the ceasefire regime as part of implementing the memorandum on the creation of de-escalation areas in the Syrian Arab Republic, signed by the Russian Federation, the Republic of Turkey and the Islamic Republic of Iran on 4 May 2017.

The number of violations by illegal armed groups active in the Idlib de-escalation area has not decreased.

The Russian representative office of the Russian and Turkish Joint Commission reviewing issues related to violations of the ceasefire regime has reported 18 incidents of gunfire: 16 in Ladhiqiyah Governorate and 2 in Aleppo Governorate.

The Turkish representative office has reported three incidents of gunfire: two in Hama Governorate and one in Aleppo Governorate.

Provision of humanitarian aid to the population of the Syrian Arab Republic

Over the past 24 hours the Centre for Reconciliation of Opposing Sides in the Syrian Arab Republic has carried out one humanitarian operation:

In the refugee camp 2 kilometres south of Risas in Suwayda' Governorate, 300 food parcels with a total weight of 1.29 tons were delivered.

In total, 1,957 humanitarian operations have been carried out. The total weight of humanitarian cargo delivered is 3,059 tons.

Reconciliation of opposing sides

No ceasefire agreements have been signed over the past 24 hours.

The number of populated areas that have joined the reconciliation process remains unchanged at 2,518.

The number of armed groups that have announced their commitment to accepting and fulfilling the terms of the ceasefire is unchanged — it is still 234.

United Nations S/2018/898

Security Council

Distr.: General
11 October 2018
English
Original: Arabic

Identical letters dated 8 October 2018 from the Permanent Representative of the Syrian Arab Republic to the United Nations addressed to the Secretary-General and the President of the Security Council

On instructions from my Government, I write further to our numerous previous letters regarding Israel's refusal to implement international resolutions requiring it to withdraw from the entire occupied Syrian Golan to the line of 4 June 1967, and regarding its continued violation of international law and the 1974 Disengagement of Forces Agreement. In response to the allegations concerning Syrian violations of the Disengagement of Forces Agreement contained in the identical letters dated 5 September 2018 from the Permanent Representative of Israel, the occupying Power, to the United Nations addressed to the Secretary-General and the President of the Security Council (S/2018/821), I should like to state the following:

With regard to the allegations regarding Syrian civilians crossing the ceasefire line in the southern part of the area of separation: The United Nations Disengagement Observer Force (UNDOF) command was not informed and does not have any record of these alleged incidents. The Syrian Arab Republic was not informed either, as ought to have occurred under the 1974 Disengagement of Forces Agreement. We note that the violations listed in the letter from the representative of Israel involve individuals with whom the Israeli occupying army has established relationships, and they are a source of grave concern to us. The Disengagement of Forces Agreement provides that in cases of breaches of this kind committed by civilians, the latter are to be handed over by the occupying Power to United Nations forces, who must then hand them over to the Syrian Government through the armistice delegation office. To date, there has not been a single case of such a handover recorded. With regard to the allegations that Syrian Arab Army tanks and personnel carriers were observed in the area of separation: To date, there has not been a single violation of the Disengagement of Forces Agreement involving any such materiel. Any inadvertent violations are dealt with as soon as they are reported by UNDOF command. That has been documented by UNDOF command.

We would, however, like to draw attention to the numerous, continuous and ongoing violations that have been committed by the Israeli occupying forces since the beginning of the terrorist war against Syria, which have been documented by UNDOF command. Following are some of those violations:

- United Nations inspection teams are constantly encountering obstacles created by the Israeli occupying forces. Inspection teams are not allowed to enter the 10 km buffer zone.

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- Israeli occupying forces entered United Nations posts in the northern zone and searched them by force. That has been documented by UNDOF command.
- On numerous occasions, Israeli occupying forces have mustered battalions and brigades in the area adjacent to the northern part of the area of separation with a view to military intervention in Syria. That has been documented by UNDOF command.
- Israeli occupying forces have violated the 1974 Disengagement of Forces Agreement by firing rockets and tank shells directly at Syrian positions and installations on specious pretexts. In many cases, they fire at fortifications belonging to civilian reserve forces that are confronting armed terrorist groups. That is in addition to providing support fire for any attacks by armed terrorist groups against Syrian law enforcement forces.
- On occasions when the Israeli occupying forces have allowed periodic inspections by United Nations Truce Supervision Organization (UNTSO) teams in the 10, 20 and 25 km zones, they have created numerous obstacles to inspections in certain areas. Those inspections revealed the following violations:
  - Four mobile artillery systems with ranges in excess of 20 km were deployed in the 10 km zone.
  - Two mobile rocket-launcher systems with ranges in excess of 20 km were deployed in the 20 km zone.
  - A Pereh missile carrier was deployed in the area of limitation of forces in the 10 km zone.
  - Two Iron Dome missile systems were deployed in the 10 km zone.

The Government of the Syrian Arab Republic reiterates that it abides by the 1974 Disengagement of Forces Agreement, in the light of the various international resolutions and United Nations Security Council resolutions affirming that the occupied Syrian Golan is an integral part of the territory of the Syrian Arab Republic. The Syrian Government implements the provisions of that agreement scrupulously. The Government of the Syrian Arab Republic calls on the United Nations, and in particular the Security Council, to take urgent measures to stop the ongoing Israeli attacks and violations against the entire territory of the Syrian Arab Republic, and to compel Israel to implement the relevant Security Council resolutions, including resolutions 242 (1967), 338 (1973) and 497 (1981), and withdraw from the entire occupied Syrian Golan to the line of 4 June 1967.

I should be grateful if the present letter could be issued as a document of the Security Council.

(*Signed*) Bashar **Ja'afari**
Permanent Representative
Ambassador

United Nations S/2018/899

Security Council

Distr.: General
8 October 2018

Original: English

Letter dated 4 October 2018 from the Secretary-General addressed to the President of the Security Council

Further to a communication from the Registrar of the International Court of Justice and in compliance with paragraph 2 of Article 41 of the Statute of the Court, I have the honour to transmit herewith a copy of the order indicating provisional measures in the case concerning *Alleged Violations of the 1955 Treaty of Amity, Economic Relations, and Consular Rights* (*Islamic Republic of Iran v. United States of America*) (see annex).*

(*Signed*) António **Guterres**

* The annex is being circulated in the languages of submission only.

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Annex

[Original: English and French]

INTERNATIONAL COURT OF JUSTICE

YEAR 2018

2018
3 October
General List
No. 175

3 October 2018

ALLEGED VIOLATIONS OF THE 1955 TREATY OF AMITY, ECONOMIC RELATIONS, AND CONSULAR RIGHTS

(ISLAMIC REPUBLIC OF IRAN *v.* UNITED STATES OF AMERICA)

REQUEST FOR THE INDICATION OF PROVISIONAL MEASURES

ORDER

Present: *President* YUSUF; *Vice-President* XUE; *Judges* TOMKA, ABRAHAM, BENNOUNA, CANÇADO TRINDADE, GAJA, BHANDARI, ROBINSON, CRAWFORD, GEVORGIAN, SALAM, IWASAWA; *Judges* ad hoc BROWER, MOMTAZ; *Registrar* COUVREUR.

The International Court of Justice,

Composed as above,

After deliberation,

Having regard to Articles 41 and 48 of the Statute of the Court and Articles 73, 74 and 75 of the Rules of Court,

Makes the following Order:

Whereas:

1. On 16 July 2018, the Islamic Republic of Iran (hereinafter referred to as "Iran") filed in the Registry of the Court an Application instituting proceedings against the United States of America (hereinafter referred to as the "United States") with regard to alleged violations of the Treaty of Amity, Economic Relations, and Consular Rights between Iran and the United States of America, which was signed at Tehran on 15 August 1955 and entered into force on 16 June 1957 (hereinafter the "Treaty of Amity" or the "1955 Treaty").

2. At the end of its Application, Iran requests the Court to adjudge, order and declare that:

"a. The USA, through the 8 May and announced further sanctions referred to in the present Application, with respect to Iran, Iranian nationals and companies, has breached its obligations to Iran under Articles IV (1), VII (1), VIII (1), VIII (2), IX (2) and X (1) of the Treaty of Amity;

b. The USA shall, by means of its own choosing, terminate the 8 May sanctions without delay;

c. The USA shall immediately terminate its threats with respect to the announced further sanctions referred to in the present Application;

d. The USA shall ensure that no steps shall be taken to circumvent the decision to be given by the Court in the present case and will give a guarantee of non-repetition of its violations of the Treaty of Amity;

e. The USA shall fully compensate Iran for the violation of its international legal obligations in an amount to be determined by the Court at a subsequent stage of the proceedings. Iran reserves the right to submit and present to the Court in due course a precise evaluation of the compensation owed by the USA."

3. In its Application, Iran seeks to found the Court's jurisdiction on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the 1955 Treaty.

4. On 16 July 2018, Iran also submitted a Request for the indication of provisional measures, referring to Article 41 of the Statute and to Articles 73, 74 and 75 of the Rules of Court.

5. At the end of its Request for the indication of provisional measures, Iran

"in its own right and as *parens patriae* of its nationals respectfully requests that, pending final judgment in this case, the Court indicate:

a. That the USA shall immediately take all measures at its disposal to ensure the suspension of the implementation and enforcement of all of the 8 May sanctions, including the extraterritorial sanctions, and refrain from imposing or threatening announced further sanctions and measures which might aggravate or extend the dispute submitted to the Court;

b. That the USA shall immediately allow the full implementation of transactions already licensed, generally or specifically, particularly for the sale or leasing of passenger aircraft, aircraft spare parts and equipment;

c. That the USA shall, within 3 months, report to the Court the action it has taken in pursuance of sub-paragraphs (a) and (b);

d. That the USA shall assure Iranian, US and non-US nationals and companies that it will comply with the Order of the Court, and shall cease any and all statements or actions that would dissuade US and non-US persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies;

e. That the USA shall refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals and companies under the Treaty of Amity with respect to any decision this Court might render on the merits."

6. The Registrar immediately communicated to the Government of the United States the Application, in accordance with Article 40, paragraph 2, of the Statute of the Court, and the Request for the indication of provisional measures, in accordance with Article 73, paragraph 2, of the Rules of Court. He also notified the Secretary-General of the United Nations of the filing of the Application and the Request by Iran.

7. Pending the notification provided for by Article 40, paragraph 3, of the Statute by transmission of the printed bilingual text of the Application to the Members of the United Nations through the Secretary-General, the Registrar informed those States of the filing of the Application and the Request.

8. By letters dated 18 July 2018, the Registrar informed the Parties that, pursuant to Article 74, paragraph 3, of its Rules, the Court had fixed 27, 28, 29 and 30 August 2018 as the dates for the oral proceedings on the Request for the indication of provisional measures.

9. On 18 July 2018, the Registrar informed both Parties that the Member of the Court of the nationality of the United States, referring to Article 24, paragraph 1, of the Statute, had notified the President of the Court of her intention not to participate in the decision of the case. Pursuant to Article 31 of the Statute and Article 37, paragraph 1, of the Rules of Court, the United States chose Mr. Charles Brower to sit as judge *ad hoc* in the case.

10. Since the Court included upon the Bench no judge of Iranian nationality, Iran proceeded to exercise the right conferred upon it by Article 31 of the Statute to choose a judge *ad hoc* to sit in the case; it chose Mr. Djamchid Momtaz.

11. On 23 July 2018, the President of the Court, acting in conformity with Article 74, paragraph 4, of the Rules of Court, addressed an urgent communication to the Secretary of State of the United States, calling upon the Government of the United States "to act in such a way as will enable any order the Court may make on the request for provisional measures to have its appropriate effects". A copy of that letter was transmitted to the Agent of Iran.

12. By a letter dated 27 July 2018, the Agent of the United States informed the Court that her Government "strongly object[ed] to Iran's Application on a number of grounds, and consider[ed] that the Court manifestly lack[ed] jurisdiction in respect of this case". She noted, in particular, that "[a]ll the elements of Iran's Application and Request for Provisional Measures [arose] from the Joint Comprehensive Plan of Action", which does not have a compromissory clause conferring jurisdiction on the International Court of Justice. The Agent further stated that "matters of which Iran complain[ed] [were] also outside the scope of the Treaty of Amity [of 1955] and beyond the limited jurisdictional grant provided by Article XXI (2), read in conjunction with Article XX (1), of the Treaty".

13. At the public hearings, oral observations on the Request for the indication of provisional measures were presented by:

On behalf of Iran: Mr. Mohsen Mohebi,
Mr. Alain Pellet,
Mr. Sean Aughey,
Mr. Samuel Wordsworth,
Mr. Jean-Marc Thouvenin.

On behalf of the United States: Ms Jennifer G. Newstead,
Mr. Donald Earl Childress III,
Ms Lisa J. Grosh,
Sir Daniel Bethlehem.

14. At the end of its second round of oral observations, Iran asked the Court to indicate the following provisional measures:

"(a) the United States shall immediately take all measures at its disposal to ensure the suspension of the implementation and enforcement of all of the 8 May sanctions, including the extraterritorial sanctions, and refrain from imposing or threatening announced further sanctions and measures which might aggravate or extend the dispute submitted to the Court;

(b) the United States shall immediately allow the full implementation of transactions already licensed, generally or specifically, particularly for the sale or leasing of passenger aircraft, aircraft spare parts and equipment;

(c) the United States shall, within 3 months, report to the Court the action it has taken in pursuance of sub-paragraphs (a) and (b);

(d) the United States shall assure Iranian, U.S. and non-U.S. nationals and companies that it will comply with the Order of the Court, and shall cease any and all statements or actions that would dissuade U.S. and non-U.S. persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies;

(e) the United States shall refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals and companies under the 1955 Treaty of Amity with respect to any decision this Court might render on the merits."

15. At the end of its second round of oral observations, the United States requested the Court to "reject the request for provisional measures filed by the Islamic Republic of Iran".

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I. FACTUAL BACKGROUND

16. Starting in 2006, the Security Council of the United Nations adopted a number of resolutions (1696 (2006), 1737 (2007), 1747 (2007), 1803 (2008), 1835 (2008) and 1929 (2010)), following reports by the International Atomic Energy Agency (hereinafter "IAEA") which were critical of Iran's compliance with its obligations under the Treaty on the Non-Proliferation of Nuclear Weapons (ratified by Iran in 1970), calling upon Iran to cease some of its nuclear activities. The Security Council also imposed sanctions in order to ensure compliance. Various States imposed additional "sanctions" on Iran.

17. On 14 July 2015, China, France, Germany, the Russian Federation, the United Kingdom and the United States, with the High Representative of the European Union for Foreign Affairs and Security Policy and the Islamic Republic of Iran, adopted a long-term Joint Comprehensive Plan of Action (hereinafter the "JCPOA" or the "Plan") concerning the nuclear programme of Iran. The declared purpose of that Plan was to ensure the exclusively peaceful nature of Iran's nuclear

programme and to produce "the comprehensive lifting of all UN Security Council sanctions as well as multilateral and national sanctions related to Iran's nuclear programme, including steps on access in areas of trade, technology, finance and energy". A Joint Commission was established to monitor the implementation of the JCPOA. The IAEA was requested to monitor and verify the implementation of the voluntary nuclear-related measures, as detailed in the relevant section of the JCPOA.

18. On 20 July 2015, the Security Council of the United Nations adopted resolution 2231 (2015), whereby it endorsed the JCPOA and urged its "full implementation on the timetable established in the JCPOA" (para. 1). In the same resolution, the Security Council provided, in particular, for the termination under certain conditions of provisions of previous Security Council resolutions on the Iranian nuclear issue (paras. 7-9) and set out measures of implementation of the JCPOA (paras. 16-20). The text of the JCPOA is contained in Annex A to Security Council resolution 2231 (2015).

19. On 16 January 2016, the President of the United States issued Executive Order 13716 revoking or amending a certain number of earlier Executive Orders on nuclear-related "sanctions" imposed on Iran or Iranian nationals.

20. On 8 May 2018, the President of the United States issued a National Security Presidential Memorandum announcing the end of the participation of the United States in the JCPOA and directing the reimposition of "sanctions lifted or waived in connection with the JCPOA". In the Memorandum, the President of the United States indicated that "Iranian or Iran-backed forces have gone on the march in Syria, Iraq, and Yemen, and continue to control parts of Lebanon and Gaza". He further stated that Iran had publicly declared that it would deny the IAEA access to military sites and that, in 2016, Iran had twice violated the JCPOA's heavy-water stockpile limits. The Presidential Memorandum determined that it was in the national interest of the United States to reimpose sanctions "as expeditiously as possible", and "in no case later than 180 days" from the date of the Memorandum. The Memorandum further specified, *inter alia*, that the Secretary of State and the Secretary of the Treasury were to prepare any necessary executive actions to "re-impose sanctions lifted by Executive Order 13716 of January 16, 2016"; to prepare to re-list persons removed, in connection with the JCPOA, from any relevant "sanctions lists", as appropriate; to revise relevant "sanctions regulations"; and to issue limited waivers during the wind-down period, as appropriate.

21. Simultaneously, the United States Department of the Treasury Office of Foreign Assets Control announced that "sanctions" would be reimposed in two steps. Upon expiry of a first wind-down period of 90 days, ending on 6 August 2018, the United States would reimpose a certain number of "sanctions" concerning, in particular, financial transactions, trade in metals, the importation of Iranian-origin carpets and foodstuffs, and the export of commercial passenger aircraft and related parts. Following a second wind-down period of 180 days, ending on 4 November 2018, the United States would reimpose additional "sanctions".

22. On 6 August 2018, the President of the United States issued Executive Order 13846 reimposing certain "sanctions" on Iran and Iranian nationals. In particular, Section 1 concerns "Blocking Sanctions Relating to Support for the Government of Iran's Purchase or Acquisition of U.S. Bank Notes or Precious Metals; Certain Iranian Persons; and Iran's Energy, Shipping, and Shipbuilding Sectors and Port Operators". Section 2 concerns "Correspondent and Payable-Through Account Sanctions Relating to Iran's Automotive Sector; Certain Iranian Persons; and Trade in Iranian Petroleum, Petroleum Products; and Petrochemical Products". Sections 3, 4 and 5 provide for the modalities of "'Menu-based' Sanctions Relating to Iran's Automotive Sector and Trade in Iranian Petroleum, Petroleum Products, and Petrochemical Products". Section 6 concerns "Sanctions Relating to the Iranian Rial". Section 7 relates to "Sanctions with Respect to the Diversion of Goods Intended for the People of Iran, the Transfer of Goods or Technologies to Iran that are Likely to be Used to Commit Human Rights Abuses, and Censorship". Section 8 relates to "Entities Owned or Controlled by a United States Person and Established or Maintained Outside the United States". Earlier Executive Orders implementing United States commitments under the JCPOA are revoked in Section 9.

23. Section 2 *(e)* of Executive Order 13846 provides that certain subsections of Section 3 shall not apply with respect to any person for conducting or facilitating a transaction for the provision (including any sale) of agricultural commodities, food, medicine or medical devices to Iran.

II. PRIMA FACIE JURISDICTION

1. General introduction

24. The Court may indicate provisional measures only if the provisions relied on by the Applicant appear, prima facie, to afford a basis on which its jurisdiction could be founded, but need not satisfy itself in a definitive manner that it has jurisdiction as regards the merits of the case (see, for example, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 236, para. 15).

25. In the present case, Iran seeks to found the jurisdiction of the Court on Article 36, paragraph 1, of the Statute of the Court and on Article XXI, paragraph 2, of the Treaty of Amity (see paragraph 3 above). The Court must first determine whether it has prima facie jurisdiction to rule on the merits of the case, enabling it — if the other necessary conditions are fulfilled — to indicate provisional measures.

26. Article XXI, paragraph 2, of the 1955 Treaty provides that:

> "Any dispute between the High Contracting Parties as to the interpretation or application of the present Treaty, not satisfactorily adjusted by diplomacy, shall be submitted to the International Court of Justice, unless the High Contracting Parties agree to settlement by some other pacific means."

2. Existence of a dispute as to the interpretation or application of the Treaty of Amity

27. Article XXI, paragraph 2, of the 1955 Treaty makes the jurisdiction of the Court conditional on the existence of a dispute as to the interpretation or application of the Treaty. The Court must therefore verify prima facie two different requirements, namely that there exists a dispute between the Parties and that this dispute concerns the "interpretation or application" of the 1955 Treaty.

28. As the Court has repeatedly noted, a dispute between States exists where they hold clearly opposite views concerning the question of the performance or non-performance of certain international obligations (see *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 115, para. 22, citing *Alleged Violations of Sovereign Rights and Maritime Spaces in the Caribbean Sea (Nicaragua* v. *Colombia), Preliminary Objections, Judgment, I.C.J. Reports 2016 (I)*, p. 26, para. 50). The claim of one party must be "positively opposed" by the other (*South West Africa (Ethiopia* v. *South Africa; Liberia* v. *South Africa), Preliminary Objections, Judgment, I.C.J. Reports 1962*, p. 328).

29. The Court observes that, in the present case, the Parties do not contest that a dispute exists. They differ, however, on the question whether this dispute relates to the "interpretation or application" of the 1955 Treaty.

30. In order to determine whether the dispute between the Parties concerns the "interpretation or application" of the 1955 Treaty, the Court cannot limit itself to noting that one of the Parties maintains that the Treaty applies, while the other denies it (cf. *Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1159, para. 47). Rather it must ascertain whether the acts complained of by the Applicant are prima facie capable of falling within the provisions of that instrument and whether, as a consequence, the dispute is one which the Court could have jurisdiction *ratione materiae* to entertain.

* *

31. Iran contends that the dispute between the Parties concerns the "interpretation or application" of the Treaty of Amity. It maintains that the dispute relates to violations by the United States of its obligations under, in particular, Article IV, paragraph 1 (fair and equitable treatment), Article VII, paragraph 1 (prohibition of restrictions on making of payments, remittances, and other transfers of funds), Article VIII, paragraphs 1 and 2 (granting of most-favoured nation treatment for the importation or exportation of products in certain matters), Article IX, paragraph 2 (granting of national or most-favoured nation treatment of nationals and companies with respect to importation or exportation) and 3 (prohibition of discriminatory measures with regard to the ability of importers or exporters to obtain marine insurance), and Article X, paragraph 1 (freedom of commerce), of the 1955 Treaty. Iran explains that these violations result from the decision of the United States of 8 May 2018 to "re-impose and enforce sanctions" that the United States had previously decided to lift in connection with the JCPOA, as well as from the announcement by the President of the United States that "further sanctions" would be imposed. According to Iran, the Plan itself constitutes merely the context in which the "sanctions" were taken. It insists that the decision of the United States to withdraw from the JCPOA is not the subject-matter of the dispute referred to the Court.

32. With regard to Article XX, paragraph 1, of the 1955 Treaty, which sets out a list of measures the application of which is not precluded by the Treaty, Iran contends that this provision does not exclude that a dispute as to these measures may concern the "interpretation or application" of the Treaty. It argues that such a dispute can arise regarding the application of Article XX, paragraph 1, and can relate to the lawfulness of measures purportedly adopted thereunder. Accordingly, Iran claims, the Court may have jurisdiction over a dispute regarding those measures. Iran recalls that, in its 1996 Judgment on the preliminary objection in the case concerning *Oil Platforms (Islamic Republic of Iran* v. *United States of America)*, the Court already found that the 1955 Treaty does not contain any "provision expressly excluding certain matters from the jurisdiction of the Court". Iran further recalls that the Court found that Article XX, paragraph 1, subparagraph *(d)*, which provides that the 1955 Treaty shall not preclude the application of measures necessary, *inter alia*, to protect a Party's essential security interests, did not restrict its jurisdiction in that case, but was confined to affording the Parties a possible defence on the merits to be used should the occasion arise (*I.C.J. Reports 1996 (II)*, p. 811, para. 20). Iran contends that there is no reason in the present case for the Court to depart from its earlier findings, according to which the provisions of Article XX of the 1955 Treaty envisage exceptions to the substantive obligations contained in other Articles of the Treaty rather than to the Court's jurisdiction under Article XXI, paragraph 2, thereof.

33. Iran further argues that, in any event, the "sanctions" announced on 8 May 2018 do not fall under the exceptions contained in Article XX, paragraph 1, subparagraphs *(b)* and *(d)*, of the 1955 Treaty, invoked by the United States. With regard to Article XX, paragraph 1, subparagraph *(b)*, which does not preclude the application of measures "relating to fissionable materials, the radio-active by-products thereof, or the sources thereof", Iran maintains that the "sanctions" do not, as a point of fact, relate to fissionable materials and do not concern the sources or by-products thereof. Iran notes that none of the transactions targeted by the "sanctions" concerns those materials. With regard to the exception in Article XX, paragraph 1, subparagraph *(d)*, Iran

contends that, even if a "wide discretion" as to the application of this provision were granted to the State invoking it, the provision must be applied in accordance with that State's obligation of good faith. That State must establish that the measures were indeed "necessary to protect its essential security interests". Iran further points out that the allegations made by the United States as to Iran's nuclear-related activities are contradicted by extensive documentation from the Joint Commission and the IAEA. Iran therefore maintains that the United States has not been able to establish that the measures were "necessary to protect its essential security interests".

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34. The United States asserts that the dispute between the Parties does not relate to the "interpretation or application" of the 1955 Treaty. In this regard, the United States first argues that the dispute arose within the framework of, and is exclusively related to, the JCPOA. Secondly, it maintains that the measures announced on 8 May 2018, which constitute the alleged violations of the 1955 Treaty, are covered, in any event, by the exceptions listed in Article XX, paragraph 1, of that Treaty, in particular in subparagraphs *(b)* and *(d)*, and that therefore the dispute falls outside the material scope of the 1955 Treaty.

35. The United States contends that the JCPOA is a distinct multilateral instrument and contains no compromissory clause providing for the jurisdiction of the Court. The United States argues that the decision announced on 8 May 2018 was taken in light of Iran's conduct after the adoption of the JCPOA and was based on national security concerns with respect to specific elements of the Plan. According to the United States, the JCPOA provides for a different mechanism for the settlement of a dispute, which "in text and structure necessarily excludes consent to the jurisdiction of [the] Court in favour of the resolution of the dispute through political channels".

36. With regard to the scope of Article XX, paragraph 1, of the 1955 Treaty, the United States maintains that this Article provides that the Treaty shall not preclude the "application" of the measures enumerated therein and that, as a result, the compromissory clause concerning any dispute about the "interpretation or application" of the Treaty "does not operate with respect to such excluded measures". The United States contends that Article XX, paragraph 1, of the 1955 Treaty is thus an express provision excluding certain measures from the scope of the Treaty and considers that this provision excludes the jurisdiction of the Court over Iran's claims in the present case. In view of this, the United States concludes that there can be no dispute as to the "interpretation or application" of the Treaty with regard to those measures and that, accordingly, the Court has no prima facie jurisdiction.

37. More specifically, with regard to the exception contained in Article XX, paragraph 1, subparagraph *(b)*, relating to fissionable materials, the United States submits that the flexibly worded text leaves considerable space for the full range of measures that might be developed and adopted to control and prevent proliferation of sensitive nuclear materials. The United States

contends that the "sanctions" announced on 8 May 2018 are aimed at addressing the shortcomings of the JCPOA in this respect. As to Article XX, paragraph 1, subparagraph *(d)*, the United States considers that it grants "wide discretion" to the invoking State. According to the United States, the reimposition of the nuclear-related economic "sanctions" that were lifted pursuant to the JCPOA is based on a core national security decision, as set out in the Presidential Memorandum of 8 May 2018, and falls within the "essential security" provision.

* *

38. The Court considers that the fact that the dispute between the Parties arose in connection with and in the context of the decision of the United States to withdraw from the JCPOA does not in and of itself exclude the possibility that the dispute relates to the interpretation or application of the Treaty of Amity (cf. *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, pp. 811-812, para. 21). In general terms, certain acts may fall within the ambit of more than one legal instrument and a dispute relating to those acts may relate to the "interpretation or application" of more than one treaty or other instrument. To the extent that the measures adopted by the United States following its decision to withdraw from the JCPOA might constitute violations of certain obligations under the 1955 Treaty, such measures relate to the interpretation or application of that instrument.

39. The Court also observes that the JCPOA does not grant exclusive competence to the dispute settlement mechanism it establishes with respect to measures adopted in its context and which may fall under the jurisdiction of another dispute settlement mechanism. Therefore, the Court considers that the JCPOA and its dispute settlement mechanism do not remove the measures complained of from the material scope of the Treaty of Amity nor exclude the applicability of its compromissory clause.

40. The Court also notes that, while Iran contests the conformity of the measures adopted with several provisions of the 1955 Treaty, the United States expressly relies on Article XX, paragraph 1, of that Treaty. Subparagraphs *(b)* and *(d)* of that provision read as follows:

> "The present Treaty shall not preclude the application of measures:
>
> . . . . . .
>
> *(b)* relating to fissionable materials, the radioactive by-products thereof, or the sources thereof;
>
> . . . . . .
>
> *(d)* necessary to fulfill the obligations of a High Contracting Party for the maintenance or restoration of international peace and security, or necessary to protect its essential security interests."

41. As the Court has had the opportunity to observe in the *Oil Platforms* case, the 1955 Treaty contains no provision expressly excluding certain matters from its jurisdiction. The Court took the view that Article XX, paragraph 1, subparagraph *(d)*, did "not restrict its jurisdiction" in that case. It considered instead that that provision was "confined to affording the Parties a possible defence on the merits to be used should the occasion arise" (see *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Preliminary Objection, Judgment, I.C.J. Reports 1996 (II)*, p. 811, para. 20).

42. The Court observes that Article XX, paragraph 1, defines a limited number of instances in which, notwithstanding the provisions of the Treaty, the Parties may apply certain measures. Whether and to what extent those exceptions have lawfully been relied on by the Respondent in the present case is a matter which is subject to judicial examination and, hence, forms an integral part of the material scope of the Court's jurisdiction as to the "interpretation or application" of the Treaty under Article XXI, paragraph 2 (see also *Military and Paramilitary Activities in and against Nicaragua (Nicaragua* v. *United States of America), Merits, Judgment, I.C.J. Reports 1986*, p. 116, para. 222).

43. The Court considers that the 1955 Treaty contains rules providing for freedom of trade and commerce between the United States and Iran, including specific rules prohibiting restrictions on the import and export of products originating from the two countries, as well as rules relating to the payment and transfer of funds between them. In the Court's view, measures adopted by the United States, for example, the revocation of licences and authorizations granted for certain commercial transactions between Iran and the United States, the ban on trade of certain items, and limitations to financial activities, might be regarded as relating to certain rights and obligations of the Parties to that Treaty. The Court is therefore satisfied that at least the aforementioned measures which were complained of by Iran are indeed prima facie capable of falling within the material scope of the 1955 Treaty.

44. The Court finds that the above-mentioned elements are sufficient at this stage to establish that the dispute between the Parties relates to the interpretation or application of the Treaty of Amity.

3. The issue of satisfactory adjustment by diplomacy under Article XXI, paragraph 2, of the Treaty of Amity

45. The Court recalls that, under the terms of Article XXI, paragraph 2, of the 1955 Treaty, the dispute submitted to it must not have been "satisfactorily adjusted by diplomacy". In addition, Article XXI, paragraph 2, states that any dispute relating to the interpretation or application of the Treaty shall be submitted to the Court, "unless the [Parties] agree to settlement by some other pacific means". The Court notes that neither Party contends that they have agreed to settlement by any other peaceful means.

* *

46. Iran argues that, with regard to the provision contained in Article XXI, paragraph 2, of the 1955 Treaty that the dispute must not have been "satisfactorily adjusted by diplomacy" before being submitted to the Court, it is sufficient for the Court to take note of the fact that this is the case. It recalls that the Court has already ruled that, in contrast to compromissory clauses contained in other treaties which are differently worded, Article XXI, paragraph 2, of the 1955 Treaty sets out a purely objective condition: the non-resolution of the dispute by diplomatic means.

47. In addition, Iran points out that it sent two Notes Verbales to the Embassy of Switzerland in Tehran (Foreign Interests Section), which serves as the channel of communication between the Governments of the Parties, on 11 June 2018 and 19 June 2018 respectively. Iran observes that, in its Note Verbale of 11 June 2018, it stated, in particular, that the "unilateral sanctions of the United States against Iran [were] in violation of US international obligations [and entail] the international responsibility" of the United States. It underlines that its Note Verbale of 19 June 2018 included an express reference to the obligations of the United States contained in the 1955 Treaty; that Note not only called upon the United States to take all necessary measures to cease immediately its breach of international obligations but also stated that, should the United States not revoke its decision of 8 May 2018 not later than 25 June 2018, Iran would "exercise its legal rights under applicable rules of international law". Iran adds that, contrary to what the United States contends, it is rather unlikely that it did not receive the second Note Verbale until a month later, and after the filing of Iran's Application, since the channel of communication between the two States has usually worked properly. Iran asserts that none of these Notes Verbales ever received a response from the United States, which confirms that the dispute between the two States has not been settled by diplomatic means.

48. Iran maintains that it has fully demonstrated that the dispute has not been "satisfactorily adjusted by diplomacy" within the meaning of Article XXI, paragraph 2, of the 1955 Treaty.

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49. The United States disagrees with that position. In particular, it claims that an applicant may only bring a claim under Article XXI, paragraph 2, following a genuine attempt to negotiate on the subject-matter of the dispute with the objective of settling the dispute by diplomatic means. The United States further contends that the negotiations must relate to the subject-matter of the Treaty invoked by the Applicant. According to the United States, Iran never afforded the United States an adequate opportunity to consult on alleged violations of the Treaty nor attempted to resolve their claims through diplomacy. The United States observes, in particular, that, of the two Notes Verbales adduced by Iran, only the Note of 19 June 2018 mentions the Treaty and that, moreover, this Note was not received by the United States until 19 July 2018, i.e. after Iran's filing

of its Application. In any event, the United States considers that the Iranian Notes Verbales do not constitute a genuine attempt to negotiate, since they did not "suggest a meeting . . . propose when or how to meet, and [did] not even ask the United States to respond". It adds that, at the highest political levels, the United States "stands ready to engage with Iran in response to a genuine initiative to address the issues of acute concern to the United States".

* *

50. The Court recalls that Article XXI, paragraph 2, of the 1955 Treaty is not phrased in terms similar to those used in certain compromissory clauses of other treaties, which, for instance, impose a legal obligation to negotiate prior to the seisin of the Court (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Georgia* v. *Russian Federation), Preliminary Objections, Judgment, I.C.J. Reports 2011 (I)*, p. 130, para. 148). Instead, the terms of Article XXI, paragraph 2, of the 1955 Treaty are descriptive in character and focus on the fact that the dispute must not have been "satisfactorily adjusted by diplomacy". Thus, there is no need for the Court to examine whether formal negotiations have been engaged in or whether the lack of diplomatic adjustment is due to the conduct of one party or the other. It is sufficient for the Court to satisfy itself that the dispute was not satisfactorily adjusted by diplomacy before being submitted to it (see *Oil Platforms (Islamic Republic of Iran* v. *United States of America), Judgment, I.C.J. Reports 2003*, pp. 210-211, para. 107).

51. In the present case, the communications sent by the Government of Iran to the Embassy of Switzerland (Foreign Interests Section) in Tehran (see paragraph 47) did not prompt any response from the United States and there is no evidence in the case file of any direct exchange on this matter between the Parties. As a consequence, the Court notes that the dispute had not been satisfactorily adjusted by diplomacy, within the meaning of Article XXI, paragraph 2, of the 1955 Treaty, prior to the filing of the Application on 16 July 2018.

4. Conclusion as to prima facie jurisdiction

52. In light of the foregoing, the Court concludes that, prima facie, it has jurisdiction pursuant to Article XXI, paragraph 2, of the 1955 Treaty to deal with the case, to the extent that the dispute between the Parties relates to the "interpretation or application" of the said Treaty.

III. THE RIGHTS WHOSE PROTECTION IS SOUGHT AND THE MEASURES REQUESTED

53. The power of the Court to indicate provisional measures under Article 41 of the Statute has as its object the preservation of the respective rights of the parties in a given case, pending its final decision. It follows that the Court must be concerned to preserve by such measures the rights which may subsequently be adjudged by it to belong to either party. Therefore, the Court may

exercise this power only if it is satisfied that the rights asserted by the party requesting such measures are at least plausible (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 126, para. 63).

54. At this stage of the proceedings, the Court is thus not called upon to determine definitively whether the rights which Iran wishes to see preserved exist; it need only decide whether the rights claimed by Iran on the merits and which it is seeking to preserve, pending the final decision of the Court, are plausible. Moreover, a link must exist between the rights whose protection is sought and the provisional measures being requested (*ibid.*, p. 126, para. 64).

* *

55. Iran contends that the rights it seeks to protect under the 1955 Treaty are plausible in so far as they are grounded in a possible interpretation and in a natural reading of the Treaty. In addition, Iran argues that the evidence before the Court establishes that the "sanctions" reimposed following the decision of the United States of 8 May 2018 constitute a violation of Iran's rights under the Treaty.

56. In particular, Iran invokes Article IV, paragraph 1, of the 1955 Treaty, which provides for the fair and equitable treatment for Iranian nationals and companies as well as for their property and enterprises, prohibits unreasonable or discriminatory measures that would impair the legally acquired rights (including contractual rights) and interests of Iranian nationals and companies, and requires the United States to ensure that the lawful contractual rights of Iranian nationals and companies are afforded effective means of enforcement. According to Iran, the "sanctions", such as those contained in Section 1 (ii) of Executive Order 13846 of 6 August 2018, which are to be applied in the event that any person provides material assistance, sponsors, or provides financial, material or technological support for, or goods or services in support of, among others the National Iranian Oil Company and the Central Bank of Iran after 5 November 2018, are incompatible with the rights of Iran under Article IV, paragraph 1.

57. Iran further observes that Article VII, paragraph 1, of the 1955 Treaty prohibits restrictions on the making of payments, remittances, and other transfers of funds to or from the territory of Iran. Iran notes that the "sanctions", notably the "sanctions" on the purchase or acquisition of US dollar banknotes and the sanctions on significant transactions related to the purchase or sale of Iranian rial, plainly entail the imposition of restrictions on the making of payments, remittances, and other transfers to or from Iran.

58. Iran moreover points out that Article VIII, paragraph 1, requires the United States to accord to Iranian products, and to products destined for export to Iran, treatment no less favourable than that accorded to like products of or destined for export to any third country. According to Iran,

Article VIII, paragraph 2, prohibits the United States from imposing restrictions or prohibitions on the import of any Iranian product or on the export of any product to Iran, unless the import or export of the like product from or to all third countries is similarly restricted or prohibited. Iran contends that the revocation of the relevant licences and authorizations which allowed entities to engage in the sale and export to Iran of, among other things, commercial aircraft and related parts and services, as well as the importation of Iranian foodstuffs and carpets to the United States, "plainly interfere[s] with the import and export of Iranian and US products" between the two territories.

59. Iran also considers that Article IX, paragraph 2, requires the United States to accord Iranian nationals and companies treatment no less favourable than that accorded to nationals and companies of any third country with respect to all matters relating to import and export. Iran contends that the "sanctions", such as imposing restrictions on foreign individuals and companies which import from or export to Iran, in fact single it out for the least favourable treatment, targeting the Iranian financial, banking, shipping and oil sectors.

60. Iran further claims that Article IX, paragraph 3, prohibits any measure of a discriminatory nature that hinders or prevents Iranian importers and exporters from obtaining marine insurance from United States companies. It argues that the United States reintroduced "sanctions" on persons who provide underwriting services or reinsurance for the National Iranian Oil Company or the National Iranian Tanker Company, thereby interfering with Iran's right under that Article.

61. Finally, Iran alleges that the "sanctions" infringe its rights under Article X, paragraph 1, of the Treaty of Amity, which guarantees the freedom of commerce and navigation between the territories of the two contracting Parties. With regard to its right to freedom of commerce, Iran argues, in particular, that the term "commerce" is to be understood in a broad sense and that any act which would impede freedom of commerce is prohibited. Iran argues that multiple elements of the United States "sanctions" have a direct or indirect impact on individual acts of commerce.

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62. The United States, for its part, contends that Iran does not plausibly have any rights with respect to the measures announced on 8 May 2018. First, the United States reiterates that Iran's asserted rights in fact arise from the JCPOA and relate to benefits it received under that instrument. The United States argues that Iran's Application makes clear that its case exclusively concerns the United States' sovereign decision to cease participation in the JCPOA. The United States contends

that Iran cannot demonstrate that its rights plausibly arise from the Treaty of Amity. According to the United States, the alleged violation is the United States' decision to withdraw from the JCPOA and the relief that Iran is claiming is "a restoration of the benefits . . . received under the JCPOA".

63. Secondly, the United States claims that the plausibility of Iran's rights under the 1955 Treaty cannot be established because the measures complained of are lawful by virtue of Article XX, paragraph 1, of the 1955 Treaty. In the view of the United States, the fact that the Treaty of Amity excludes measures under Article XX, paragraph 1, from the scope of the Parties' obligations should lead the Court to find that Iran's claims are "not sufficiently serious" on the merits. It maintains, in particular, that the treaty rights claimed by Iran are expressly limited by the exceptions granted to the United States to take measures "relating to fissionable materials" (subparagraph *(b)*) or "necessary to protect its essential security interests" (subparagraph *(d)*). The United States therefore concludes that, also in this respect, Iran's asserted rights are not plausible.

* *

64. The Court observes at the outset that the claims set out in the Application of Iran make reference solely to alleged violations of the 1955 Treaty; they do not refer to any provisions of the JCPOA.

65. Under the provisions of the 1955 Treaty invoked by Iran, both contracting Parties enjoy a number of rights with regard to financial transactions, the import and export of products to and from each other's territory, the treatment of nationals and companies of the Parties and, more generally, freedom of commerce and navigation. The Court further notes that the United States does not, as such, contest that Iran holds these rights under the 1955 Treaty or that the measures adopted are capable of affecting these rights. Instead, the United States claims that Article XX, paragraph 1, of the 1955 Treaty, entitles it to apply certain measures, *inter alia*, to protect its essential security interests, and argues that the plausibility of the alleged rights of Iran must be assessed in light of the plausibility of the rights of the United States.

66. Article IV, paragraph 1, Article VII, paragraph 1, Article VIII, paragraphs 1 and 2, Article IX, paragraphs 2 and 3, and Article X, paragraph 1, of the 1955 Treaty, invoked by Iran, read as follows:

"*Article IV*

1. Each High Contracting Party shall at all times accord fair and equitable treatment to nationals and companies of the other High Contracting Party, and to their property and enterprises; shall refrain from applying unreasonable or discriminatory measures that would impair their legally acquired rights and interests; and shall assure that their lawful contractual rights are afforded effective means of enforcement, in conformity with the applicable laws.

. . . . . .

Article VII

1. Neither High Contracting Party shall apply restrictions on the making of payments, remittances, and other transfers of funds to or from the territories of the other High Contracting Party, except *(a)* to the extent necessary to assure the availability of foreign exchange for payments for goods and services essential to the health and welfare of its people, or *(b)* in the case of a member of the International Monetary Fund, restrictions specifically approved by the Fund.

. . . . . .

Article VIII

1. Each High Contracting Party shall accord to products of the other High Contracting Party, from whatever place and by whatever type of carrier arriving, and to products destined for exportation to the territories of such other High Contracting Party, by whatever route and by whatever type of carrier, treatment no less favorable than that accorded like products of or destined for exportation to any third country, in all matters relating to: *(a)* duties, other charges, regulations and formalities, on or in connection with importation and exportation; and *(b)* internal taxation, sale, distribution, storage and use. The same rule shall apply with respect to the international transfer of payments for imports and exports.

2. Neither High Contracting Party shall impose restrictions or prohibitions on the importation of any product of the other High Contracting Party or on the exportation of any product to the territories of the other High Contracting Party, unless the importation of the like product of, or the exportation of the like product to, all third countries is similarly restricted or prohibited.

. . . . . .

Article IX

. . . . . .

2. Nationals and companies of either High Contracting Party shall be accorded treatment no less favorable than that accorded nationals and companies of the other High Contracting Party, or of any third country, with respect to all matters relating to importation and exportation.

3. Neither High Contracting Party shall impose any measure of a discriminatory nature that hinders or prevents the importer or exporter of products of either country from obtaining marine insurance on such products in companies of either High Contracting Party.

. . . . . .

Article X

1. Between the territories of the two High Contracting Parties there shall be freedom of commerce and navigation."

67. The Court notes that the rights whose preservation is sought by Iran appear to be based on a possible interpretation of the 1955 Treaty and on the prima facie evidence of the relevant facts. Further, in the Court's view, some of the measures announced on 8 May 2018 and partly implemented by Executive Order 13846 of 6 August 2018, such as the revocation of licences granted for the import of products from Iran, the limitation of financial transactions and the prohibition of commercial activities, appear to be capable of affecting some of the rights invoked by Iran under certain provisions of the 1955 Treaty (see paragraph 66 above).

68. However, in assessing the plausibility of the rights asserted by Iran under the 1955 Treaty, the Court must also take into account the invocation by the United States of Article XX, paragraph 1, subparagraphs *(b)* and *(d)*, of the Treaty. The Court need not carry out at this stage of the proceedings a full assessment of the respective rights of the Parties under the 1955 Treaty. However, the Court considers that, in so far as the measures complained of by Iran could relate "to fissionable materials, the radio-active by-products thereof, or the sources thereof" or could be "necessary to protect . . . essential security interests" of the United States, the application of Article XX, paragraph 1, subparagraphs *(b)* or *(d)*, might affect at least some of the rights invoked by Iran under the Treaty of Amity.

69. Nonetheless, the Court is of the view that other rights asserted by Iran under the 1955 Treaty would not be so affected. In particular, Iran's rights relating to the importation and purchase of goods required for humanitarian needs, and to the safety of civil aviation, cannot plausibly be considered to give rise to the invocation of Article XX, paragraph 1, subparagraphs *(b)* or *(d)*.

70. In light of the foregoing, the Court concludes that, at the present stage of the proceedings, some of the rights asserted by Iran under the 1955 Treaty are plausible in so far as they relate to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft.

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71. The Court now turns to the issue of the link between the rights claimed and the provisional measures requested.

* *

72. Iran maintains that there is a clear link between all the measures requested and its rights under the 1955 Treaty. In particular, Iran states that it requests five provisional measures aimed at ensuring that the United States will take no action that would further prejudice Iran's treaty rights. According to Iran, the first measure requested is directly linked to all of the rights invoked by Iran under the 1955 Treaty, the second measure requested would protect the rights invoked by Iran under Articles IV, VIII and X, and the third measure requested is intended to ensure the effectiveness of the first two measures. Iran contends that the fourth measure requested is aimed at generating the confidence necessary to protect Iran's rights under the Treaty from further prejudice due to the "chilling effect" of the "sanctions" and the announcement by the United States of further "sanctions". Finally, Iran argues that the fifth measure requested is a standard clause providing further protection of Iran's rights from actions taking place before a final decision by the Court. Iran also contends that the measures requested are different from the claims of Iran on the merits, in so far as they are aimed at suspending the "sanctions" and not at terminating them.

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73. The United States notes that the measures requested are not sufficiently linked to the rights whose protection is sought. In particular, it argues that Iran requests, in effect, the restoration of "sanctions" relief provided for by the JCPOA and the issuance of numerous specific waivers and licences. The United States argues that Iran has not provided any basis for the Court to conclude that the measures requested, namely the restoration of the JCPOA relief, "would vindicate those

rights", in light of the exceptions under Article XX, paragraph 1, protecting the United States' right to take measures to address matters of national security.

* *

74. The Court recalls that Iran has requested the suspension of the implementation and enforcement of all measures announced on 8 May 2018 and the full implementation of transactions already licensed. Iran has further requested the Court to order that the United States must, within three months, report on the action taken with regard to those measures and assure "Iranian, US and non-US nationals and companies that it will comply with the Order of the Court" and that it "shall cease any and all statements or actions that would dissuade US and non-US persons and entities from engaging or continuing to engage economically with Iran and Iranian nationals or companies". Finally, Iran requests that the United States must refrain from taking any other measure that might prejudice the rights of Iran and Iranian nationals under the 1955 Treaty.

75. The Court has already found that at least some of the rights asserted by Iran under the 1955 Treaty are plausible (see paragraphs 69-70 above). It recalls that this is the case with respect to the asserted rights of Iran, in so far as they relate to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities; as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. In the view of the Court, certain aspects of the measures requested by Iran aimed at ensuring freedom of trade and commerce, particularly in the above-mentioned goods and services, may be considered to be linked to those plausible rights whose protection is being sought.

76. The Court concludes, therefore, that a link exists between some of the rights whose protection is being sought and certain aspects of the provisional measures being requested by Iran.

IV. RISK OF IRREPARABLE PREJUDICE AND URGENCY

77. The Court, pursuant to Article 41 of its Statute, has the power to indicate provisional measures when there is a risk that irreparable prejudice could be caused to rights which are the subject of judicial proceedings (see, for example, *Jadhav (India* v. *Pakistan), Provisional Measures, Order of 18 May 2017, I.C.J. Reports 2017*, p. 243, para. 49), or when the alleged disregard of such rights may entail irreparable consequences.

78. However, the power of the Court to indicate provisional measures will be exercised only if there is urgency, in the sense that there is a real and imminent risk that irreparable prejudice will be caused before the Court gives its final decision (*ibid.*, para. 50). The condition of urgency is met

when the acts susceptible of causing irreparable prejudice can "occur at any moment" before the Court makes a final decision on the case (*Immunities and Criminal Proceedings (Equatorial Guinea* v. *France), Provisional Measures, Order of 7 December 2016, I.C.J. Reports 2016 (II)*, p. 1169, para. 90). The Court must therefore consider whether such a risk exists at this stage of the proceedings.

79. The Court is not called upon, for the purposes of its decision on the Request for the indication of provisional measures, to establish the existence of breaches of the Treaty of Amity, but to determine whether the circumstances require the indication of provisional measures for the protection of rights under this instrument. It cannot at this stage make definitive findings of fact, and the right of each Party to submit arguments in respect of the merits remains unaffected by the Court's decision on the Request for the indication of provisional measures.

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80. Iran asserts that there is a real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision. It considers that some of the measures taken by the United States are already causing and will continue to cause irreparable prejudice to these rights. In this regard, Iran notes that such prejudice has already taken place since 8 May 2018 and that the United States has made it known that it is "determined to cause even greater prejudice" to Iran, its companies and its nationals in the near future. Iran recalls that, on 6 August 2018, the President of the United States issued Executive Order 13846 entitled "Reimposing Certain Sanctions With Respect to Iran", which entered into force on 7 August 2018. It explains that this Executive Order aims, *inter alia*, at "reimposing sanctions on Iran's automotive sector and on its trade in gold and precious metals, as well as sanctions related to the Iranian rial", and expanding the scope of "sanctions" that were in effect prior to 16 January 2016.

81. According to Iran, the United States' measures create an imminent risk of irreparable prejudice to airline safety and security. It notes that contracts concluded in the aviation sector between United States and Iranian companies have already been cancelled or adversely affected as a direct result of these measures, leaving Iran's commercial airlines and civil passengers with an ageing fleet, limited access to maintenance information, services and spare parts. Iran is of the view that, by preventing Iranian airlines from renewing their already old airline fleets, purchasing spare parts and other necessary equipment and services, training pilots to international standards or using foreign airport services, the lives of Iranian passengers and crew, and other customers of Iranian airlines will be placed in danger. Therefore, according to Iran, if nothing is done to prevent the United States from giving full effect to its measures, the situation could lead to "irreparable human damages" notwithstanding the existence of a procedure for applying for specific licences under the United States safety of flight licensing policy. Iran further alleges that the measures taken

by the United States create an imminent risk to the health of Iranians. With respect to humanitarian goods, it claims that despite the exemption under the United States law, the current system makes it impossible for Iran to import urgently needed supplies. With respect to healthcare, it observes that, despite the exemption under the United States law for medicines, chemicals for the production of medicines and medical supplies, access to medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment for the Iranian people have become restricted because the United States' measures have deeply affected the delivery and availability of these supplies.

82. Iran further refers to the United States' measures scheduled for 4 November 2018, which would "considerably tighten the screws on Iran" and "amplify[] the prejudice to its rights under the Treaty of Amity". Iran also observes that it is impossible for the Court to deliver its final decision before 4 November 2018, the date after which all the United States' nuclear-related measures that had been lifted or waived in connection with the JCPOA will be reimposed in full effect.

83. Iran asserts that the official announcement by the United States of 8 May 2018 is producing irreparable damage to the whole Iranian economy, both generally and to key sectors, such as the automotive industry, the oil and gas industry, civil aviation and the banking and financial system. It contends that, since the decision was made public, multiple United States and foreign companies and nationals have announced their withdrawal from activities in Iran, including the termination of their contractual relations with Iranian companies and nationals, which the United States could not restore even if ordered to do so by the Court.

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84. The United States, for its part, contends that there is no urgency, in the sense that there is no real and imminent risk that irreparable prejudice will be caused to the rights in dispute before the Court gives its final decision. It observes that the measures that were announced on 8 May 2018 are not new measures but, rather, the reimposition of "sanctions" that had previously been in place. Therefore, according to the United States, there cannot be urgency now if there was no urgency when the said measures were first taken.

85. The United States asserts that Iran cannot satisfy the requirements of irreparable prejudice for a number of reasons. As a general matter, it considers that the Applicant has not provided sufficient evidence to prove a risk of irreparable harm to Iranians, Iranian companies and Iran itself. It adds that there could be multiple causes to which the economic stagnation and difficulties in Iran can be attributed, including mismanagement by the Iranian Government. It is also of the view that, if there was a risk of prejudice, it could not be irreparable because economic harm can be repaired. In any event, the United States maintains that it is difficult to assess the

specific impact of its measures on the Iranian economy, especially since the European Union has recently stated that it would intensify its efforts at maintaining economic relations with Iran.

86. With respect to the alleged risk of irreparable prejudice caused to airline safety, the United States claims that it has maintained a licensing policy providing for a case-by-case issuance of licences to ensure the safety of civil aviation and the safe operation of United States-origin commercial passenger aircraft. It further asserts that, following the reimposition of the remaining "sanctions", after the expiry of the second wind-down period on 4 November 2018, the United States will continue to consider licence applications regarding civil aircraft spare parts and equipment where there is a safety concern. With respect to the alleged risk of irreparable prejudice caused to health, the United States contends that it has maintained broad authorizations and exceptions to allow for humanitarian-related activity. It adds that the United States has a long-standing policy to authorize exports to Iran of humanitarian goods, including agricultural commodities, medicines, medical devices, and replacement parts for such devices. The United States also claims to have licensed non-governmental organizations to provide a range of services to or in Iran, including in connection with activities related to humanitarian projects. It further affirms that it has taken specific steps to mitigate the impact of its measures on the Iranian people. In addition to the humanitarian-related authorizations and exceptions, the United States asserts that a series of United States statutes, executive orders and regulations provide explicit exceptions making it clear that third-State nationals who engage in humanitarian-related activity will not be exposed to United States "sanctions". It specifies that all of these measures have remained intact following the reimposition of "sanctions" after the expiry of the first wind-down period on 6 August 2018, and that they will remain in place following the reimposition of the remaining "sanctions" after the expiry of the second wind-down period on 4 November 2018.

87. The United States finally claims that the provisional measures Iran requests would, if indicated, cause irreparable prejudice to the sovereign rights of the United States to pursue its policy towards Iran, and, in accordance with Article XX, paragraph 1, of the Treaty of Amity, to take measures that it considers necessary to protect its essential security interests. In this regard, the Respondent points out that the issue is not simply whether the rights of the Applicant are in danger of irreparable prejudice but also the impact of the requested measures on the rights of the Respondent. It is of the view that Article 41 of the Statute requires the Court to take account of the rights of the respondent by weighing up those rights against the claimed rights of the applicant.

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88. The Court notes that the decision announced on 8 May 2018 appears to have already had an impact on import and export of products originating from the two countries as well as on the payments and transfer of funds between them, and that its consequences are of a continuing nature. The Court notes that, as of 6 August 2018, contracts concluded before the imposition of measures

involving a commitment on the part of Iranian airline companies to purchase spare parts from United States companies (or from foreign companies selling spare parts partly constituted of United States components) appear to have been cancelled or adversely affected. In addition, companies providing maintenance for Iranian aviation companies have been prevented from doing so when it involved the installation or replacement of components produced under United States licences.

89. Furthermore, the Court notes that, while the importation of foodstuffs, medical supplies and equipment is in principle exempted from the United States' measures, it appears to have become more difficult in practice, since the announcement of the measures by the United States, for Iran, Iranian companies and nationals to obtain such imported foodstuffs, supplies and equipment. In this regard, the Court observes that, as a result of the measures, certain foreign banks have withdrawn from financing agreements or suspended co-operation with Iranian banks. Some of these banks also refuse to accept transfers or to provide corresponding services. It follows that it has become difficult if not impossible for Iran, Iranian companies and nationals to engage in international financial transactions that would allow them to purchase items not covered, in principle, by the measures, such as foodstuffs, medical supplies and medical equipment.

90. The Court considers that certain rights of Iran under the 1955 Treaty invoked in these proceedings that it has found plausible are of such a nature that disregard of them may entail irreparable consequences. This is the case in particular for those rights relating to the importation and purchase of goods required for humanitarian needs, such as (i) medicines and medical devices, and (ii) foodstuffs and agricultural commodities, as well as goods and services required for the safety of civil aviation, such as (iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft.

91. The Court is of the view that a prejudice can be considered as irreparable when the persons concerned are exposed to danger to health and life. In its opinion, the measures adopted by the United States have the potential to endanger civil aviation safety in Iran and the lives of its users to the extent that they prevent Iranian airlines from acquiring spare parts and other necessary equipment, as well as from accessing associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. The Court further considers that restrictions on the importation and purchase of goods required for humanitarian needs, such as foodstuffs and medicines, including life-saving medicines, treatment for chronic disease or preventive care, and medical equipment may have a serious detrimental impact on the health and lives of individuals on the territory of Iran.

92. The Court notes that, during the oral proceedings, the United States offered assurances that the United States Department of State would "use its best endeavours" to ensure that "humanitarian or safety of flight-related concerns which arise following the reimposition of the United States sanctions" receive "full and expedited consideration by the Department of the Treasury or other relevant decision-making agencies". While appreciating these assurances, the

Court considers nonetheless that, in so far as they are limited to an expression of best endeavours and to co-operation between departments and other decision-making agencies, the said assurances are not adequate to address fully the humanitarian and safety concerns raised by the Applicant. Therefore, the Court is of the view that there remains a risk that the measures adopted by the United States, as set out above, may entail irreparable consequences.

93. The Court further notes that the situation resulting from the measures adopted by the United States, following the announcement of 8 May 2018, is ongoing, and that there is, at present, little prospect of improvement. Moreover, the Court considers that there is urgency, taking into account the imminent implementation by the United States of an additional set of measures scheduled for after 4 November 2018.

94. The indication by the Court of provisional measures responding to humanitarian needs would not cause irreparable prejudice to any rights invoked by the United States.

V. CONCLUSION AND MEASURES TO BE ADOPTED

95. The Court concludes from all of the above considerations that the conditions required by its Statute for it to indicate provisional measures are met. It is therefore necessary, pending its final decision, for the Court to indicate certain measures in order to protect the rights claimed by Iran, as identified above (see paragraphs 70 and 75 above).

96. The Court recalls that it has the power, under its Statute, when a request for provisional measures has been made, to indicate measures that are, in whole or in part, other than those requested. Article 75, paragraph 2, of the Rules of Court specifically refers to this power of the Court. The Court has already exercised this power on several occasions in the past (see, for example, *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018*, para. 73; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 139, para. 100).

97. In the present case, having examined the terms of the provisional measures requested by Iran and the circumstances of the case, the Court finds that the measures to be indicated need not be identical to those requested.

98. The Court considers that the United States, in accordance with its obligations under the 1955 Treaty, must remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of Iran of goods required for humanitarian needs, such as (i) medicines and medical devices; and (ii) foodstuffs and agricultural commodities, as well as goods and services required for the safety of civil aviation, such as

(iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and safety-related inspections) necessary for civil aircraft. To this end, the United States must ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to above.

99. The Court recalls that Iran has requested that it indicate measures aimed at ensuring the non-aggravation of the dispute with the United States. When indicating provisional measures for the purpose of preserving specific rights, the Court may also indicate provisional measures with a view to preventing the aggravation or extension of a dispute whenever it considers that the circumstances so require (see *Application of the International Convention on the Elimination of All Forms of Racial Discrimination (Qatar* v. *United Arab Emirates), Provisional Measures, Order of 23 July 2018*, para. 76; *Application of the International Convention for the Suppression of the Financing of Terrorism and of the International Convention on the Elimination of All Forms of Racial Discrimination (Ukraine* v. *Russian Federation), Provisional Measures, Order of 19 April 2017, I.C.J. Reports 2017*, p. 139, para. 103). In this case, having considered all the circumstances, in addition to the specific measures it has decided to take, the Court deems it necessary to indicate an additional measure directed to both Parties and aimed at ensuring the non-aggravation of their dispute.

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100. The Court reaffirms that its "orders on provisional measures under Article 41 [of the Statute] have binding effect" (*LaGrand (Germany* v. *United States of America), Judgment, I.C.J. Reports 2001*, p. 506, para. 109) and thus create international legal obligations for any party to whom the provisional measures are addressed.

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101. The decision given in the present proceedings in no way prejudges the question of the jurisdiction of the Court to deal with the merits of the case or any questions relating to the admissibility of the Application or to the merits themselves. It leaves unaffected the right of the Governments of the Islamic Republic of Iran and the United States of America to submit arguments in respect of those questions.

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102. For these reasons,

THE COURT,

Indicates the following provisional measures:

(1) Unanimously,

The United States of America, in accordance with its obligations under the 1955 Treaty of Amity, Economic Relations, and Consular Rights, shall remove, by means of its choosing, any impediments arising from the measures announced on 8 May 2018 to the free exportation to the territory of the Islamic Republic of Iran of

(i) medicines and medical devices;

(ii) foodstuffs and agricultural commodities; and

(iii) spare parts, equipment and associated services (including warranty, maintenance, repair services and inspections) necessary for the safety of civil aviation;

(2) Unanimously,

The United States of America shall ensure that licences and necessary authorizations are granted and that payments and other transfers of funds are not subject to any restriction in so far as they relate to the goods and services referred to in point (1);

(3) Unanimously,

Both Parties shall refrain from any action which might aggravate or extend the dispute before the Court or make it more difficult to resolve.

Done in English and in French, the English text being authoritative, at the Peace Palace, The Hague, this third day of October, two thousand and eighteen, in three copies, one of which will be placed in the archives of the Court and the others transmitted to the Government of the Islamic Republic of Iran and the Government of the United States of America, respectively.

(Signed) Abdulqawi Ahmed YUSUF,
President.

(Signed) Philippe COUVREUR,
Registrar.

Judge CANÇADO TRINDADE appends a separate opinion to the Order of the Court; Judge *ad hoc* MOMTAZ appends a declaration to the Order of the Court.

(Initialled) A.A.Y.

(Initialled) Ph.C.